105th Congress 1st Session – – – – – – – – – – – – House Document 105–111

LEGISLATIVE PROPOSAL ENTITLED "IMMIGRATION REFORM TRANSITION ACT OF 1997"

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A LEGISLATIVE PROPOSAL TO PROVIDE RELIEF TO CERTAIN ALIENS WHO WOULD OTHERWISE BE SUBJECT TO REMOVAL FROM THE UNITED STATES

JULY 24, 1997.—Message and accompanying papers referred to the Committee on the Judiciary and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

39–011 WASHINGTON : 1997

To the Congress of the United States:

I am pleased to submit for your immediate consideration and enactment the "Immigration Reform Transition Act of 1997," which is accompanied by a section-by-section analysis. This legislative proposal is designed to ensure that the complete transition to the new "cancellation of removal" (formerly "suspension of deportation") provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; Public Law 104–208) can be accomplished in a fair and equitable manner consistent with our law enforcement needs and foreign policy interests.

This legislative proposal would aid the transition to IIRIRA's new cancellation of removal rules and prevent the unfairness of applying those rules to cases pending before April 1, 1997, the effective date of the new rules. It would also recognize the special circumstances of certain Central Americans who entered the United States in the 1980s in response to civil war and political persecution. The Nicaraguan Review Program, under successive Administrations from 1985 to 1995, protected roughly 40,000 Nicaraguans from deportation while their cases were under review. During this time the *American Baptist Churches* v. *Thornburgh* (ABC) litigation resulted in a 1990 court settlement, which protected roughly 190,000 Salvadorans and 50,000 Guatemalans. Other Central Americans have been unable to obtain a decision on their asylum applications for many years. Absent this legislative proposal, many of these individuals would be denied protection from deportation under IIRIRA's new cancellation of removal rules. Such a result would unduly harm stable families and communities here in the United States and undermine our strong interests in facilitating the development of peace and democracy in Central America.

This legislative proposal would delay the effect of IIRIRA's new provisions so that immigration cases pending before April 1, 1997, will continue to be considered and decided under the old suspension of deportation rules as they existed prior to that date. IIRIRA's new cancellation of removal rules would generally apply to cases commenced on or after April 1, 1997. This proposal dictates no particular outcome of any case. Every application for suspension of deportation or cancellation of removal must still be considered on a case-by-case basis. The proposal simply restores a fair opportunity to those whose cases have long been in the system or have other demonstrable equities.

In addition to continuing to apply the old standards to old cases, this legislative proposal would exempt such cases from IIRIRA's annual cap of 4,000 cancellations of removal. It would also exempt from the cap cases of battered spouses and children who otherwise receive such cancellation.

The proposal also guarantees that the cancellation of removal proceedings of certain individuals covered by the 1990 ABC litiga-

tion settlement and certain other Central Americans with long-pending asylum claims will be governed by the pre-IRRIRA substantive standard of 7 years continuous physical presence and extreme hardship. It would further exempt those same individuals from IIRIRA's cap. Finally, individuals affected by the legislation whose time has lapsed for reopening their cases following a removal order would be granted 180 days in which to do so.

My Administration is committed to working with the Congress to enact this legislation. If, however, we are unsuccessful in this goal, I am prepared to examine any available administrative options for granting relief to this class of immigrants. These options could include a grant of Deferred Enforced Departure for certain classes of individuals who would qualify for relief from deportation under this legislative proposal. Prompt legislative action on my proposal would ensure a smooth transition to the full implementation of IIRIRA and prevent harsh and avoidable results.

I urge the Congress to give this legislative proposal prompt and favorable consideration.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 24, 1997.*

A BILL

To provide relief to certain aliens who would otherwise be subject to removal from the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. This Act may be cited as the "Immigration Reform Transition Act of 1997".

SEC. 2.

(a) Section 240A, subsection (e), of the Immigration and Nationality Act is amended—

(1) in the first sentence, by striking "this section" and inserting in lieu thereof "section 240A(b)(1)";

(2) by striking ", nor suspend the deportation and adjust the status under section 244(a) (as in effect before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996),"; and

(3) by striking the last sentence in the subsection and inserting in lieu thereof "The previous sentence shall apply only to removal cases commenced on or after April 1, 1997, including cases where the Attorney General exercises authority pursuant to paragraphs (2) or (3) of section 309(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009).".

(b) Section 309, subsection (c), of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009) is amended by striking paragraphs (5) and (7).

(c) Section 240A of the Immigration and Nationality Act is amended—

(1) in subsection (b), paragraph (3), by striking "(1) or (2)" in the first and third sentences of that paragraph and inserting in lieu thereof "(1), (2), or (3)";

(2) in subsection (b), by redesignating paragraph (3) as paragraph (4);

(3) in subsection (d), paragraph (1), by striking "this section." and inserting in lieu thereof "subsections (a), (b)(1), and (b)(2).";

(4) in subsection (b), by adding after paragraph (2) the following new paragraph—

"(3) SPECIAL RULE FOR CERTAIN ALIENS COVERED BY THE SETTLEMENT AGREEMENT IN American Baptist Churches et al. v. Thornburgh (ABC), 760 F. Supp. 796 (N.D. Cal. 1991) -

"(A) The Attorney General may, in his or her discretion, cancel removal and adjust the status from such cancellation in the case of an alien who is removable from the United States if the alien demonstrates that -

"(i) the alien has not been convicted at any time of an aggravated felony and

"(I) was not apprehended after December 19, 1990, at the time of entry, and is either

"(aa) a Salvadoran national who first entered the United States on or before September 19, 1990, who registered for benefits pursuant to the ABC settlement agreement on or before October 31, 1991, or applied for Temporary Protected Status on or before October 31, 1991; or

"(bb) a Guatemalan national who first entered the United States on or before October 1, 1990, and who registered for benefits pursuant to the ABC settlement agreement by December 31, 1991; or

"(cc) the spouse or unmarried son or daughter of an alien described in (aa) who entered the United States on or before September 19, 1990, or the spouse or unmarried son or daughter of an alien described in (bb) who entered the United States on or before October 1, 1990; or

"(II) is a Nicaraguan, Guatemalan, or Salvadoran who filed an application for asylum with the Immigration and Naturalization Service before April 1, 1990, and the Immigration and Naturalization Service had not granted, denied, or refered that application as of April 1, 1997; and

"(ii) the alien is not described in paragraph (4) of section 237(a) or paragraph (3) of section 212(a) of the Act; and

"(iii) the alien

"(I) is removable under any law of the United States except the provisions specified in subclause (II) of this clause, has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character, and is a person whose removal would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

"(II) is removable under paragraph (2) (other than section 237(a)(2)(A)(iii)) of section 237(a), paragraph (3) of section 237(a), or paragraph (2) of section 212(a), has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral

character, and is a person whose removal would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen of the United States, or an alien lawfully admitted for permanent residence.

"(B) Subsection (d) of this section shall not apply to determinations under this paragraph, and an alien shall not be considered to have failed to maintain continuous physical presence in the United States under clause (A)(iii) of this paragraph if the alien demonstrates that the absence from the United States was brief, casual, and innocent, and did not meaningfully interrupt the continuous physical presence.

"(C) The determination by the Attorney General whether an alien meets the requirements of subparagraph (A) or (B) of this paragraph is final and shall not be subject to review by any court. Nothing in the preceding sentence shall be construed as limiting the application of subparagraph (B) of section 242(a)(2) to other eligibility determinations pertaining to discretionary relief under this Act.".

(d) The amendments made by this section shall be effective as if included in Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, 110 Stat. 3009).

SEC. 3.

Any alien who has become eligible for suspension of deportation or cancellation of removal as a result of the amendments made by section 2, may, notwithstanding any other

limitations on motions to reopen imposed by the Immigration and Nationality Act or by regulation, file one motion to reopen to apply for suspension of deportation or cancellation of removal. The Attorney General shall designate a specific time period in which all such motions to reopen must be filed. The period must begin no later than 120 days after the date of enactment of this Act and shall extend for a period of 180 days.

Section-by-Section Analysis of the "Immigration Reform Transition Act of 1997"

Background

This legislation provides a better transition than exists under current law to the new rules applicable to relief formerly known as suspension of deportation. In particular, it prevents any unfairness that could come from applying new rules to pending cases, and it recognizes the special circumstances of Central Americans who sought refuge in this country from civil war and upheaval. On the other hand, it does not provide for an amnesty — instead it merely provides that applicants for suspension of deportation who were in the administrative pipeline, as herein described, must continue to meet the standards that applied before the 1996 immigration reform law took effect.

Under previous law (former Immigration and Nationality Act (INA) § 244), suspension could be granted, in the discretion of the immigration judge, to an alien who had been present in the United States for seven years, showed good moral character, and demonstrated that deportation would cause "extreme hardship" to the alien or to a spouse, parent, or child who is a lawful permanent resident or a U.S. citizen. Under amendments adopted by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the substantive standards are considerably tightened for this relief, now called "cancellation of removal," INA § 240A(b)(1). The alien must show ten years of continuous physical presence and good moral character, and must demonstrate that removal would cause "exceptional and extremely unusual hardship" to a lawfully resident or U.S. citizen spouse, parent, or child. Hardship to the alien alone is no longer relevant. Those tighter standards apply, however, only to removal cases initiated on or after the effective date of Title III-A of IIRIRA, April 1, 1997. Cases initiated earlier may still be decided under the previous seven-year suspension standard.

IIRIRA also imposed two other restrictions on this general form of relief, however, and both have been applied to pending suspension cases as well:

> (1) "Stop-time" rule. Under pre-IIRIRA suspension rules, an individual could continue accruing time toward the needed seven years after deportation proceedings had commenced. INA § 240A(d), added by IIRIRA, adopts a new "stop-time" rule, which requires that the requisite period be achieved before the notice to appear is served. The Board of Immigration Appeals construed IIRIRA § 309(c)(5) as making this rule applicable as well to all cases where the grant of suspension was not final on the date of enactment. *Matter of N-J-B-*, Int. Dec. # 3309 (BIA February 20, 1997).

(2) Annual cap. INA § 240A(e) and IIRIRA § 309(c)(7) impose an annual cap of 4000 on the number of suspensions and adjustments plus cancellations and adjustments in any given fiscal year, beginning with FY 97, which began on October 1, 1996, one day after IIRIRA's enactment. This immediate application to cases in the pipeline, which are still adjudicated under the previous suspension rules in most respects, has caused disruption in normal case processing in the immigration courts because it suddenly imposed a quantitative limit on what had previously been a purely qualitative determination, administered in decentralized fashion by over 200 immigration judges. The problem has been particularly acute because the imposition of the cap coincided with a higher volume of suspension applications, owing, *inter alia,* to developments in long-standing class-action litigation, especially American Baptist Churches v. Thornburgh, (ABC) (settlement agreement reached in 1990) and to the phasing out of the Nicaraguan Review Program initiated by the Reagan Administration.

General description of the amendments

The proposed amendments are meant to eliminate application of the new rules governing suspension-type relief to cases in the pipeline. Cases in the pipeline before the new law took effect would continue to be decided under the old suspension rules in all respects (this includes all cases previously covered by the Nicaraguan Review Program), while new, post-April 1, 1997, cases would be governed by the new standards adopted in IIRIRA § 240A(b), including the stop-time rule and the annual cap. Also, in recognition of the special circumstance of certain persons covered by the Bush Administration's settlement of the ABC litigation in 1990 and of certain other Central Americans with long-pending asylum claims, the proposed amendments apply to such persons the pre-April 1 rules. These are, in effect, "pipeline" cases, and the amendment specifically mandates that their relief applications be judged under the earlier substantive standards. None of the amendments, however, dictates that any of the affected persons shall be granted relief. Every application for suspension or cancellation must still be considered, on a case-by-case basis.

Section-by-section analysis

Section 1. This bill may be cited as the "Immigration Reform Transition Act of 1997."

Section 2(a). This subsection amends INA § 240A(e) so that the annual cap set forth there applies only to cases commenced after April 1, 1997 (where the applicable relief is cancellation of removal, with its 10 year and higher hardship requirements, rather than suspension of deportation). The subsection exempts from the cap

pre-April 1 cases (suspension cases) as well as battered spouses and children who receive cancellation under the special rules of 240A(b)(2) and certain individuals covered by the ABC settlement who receive cancellation under 240A(b)(3).

Section 2(b). The repeal of IIRIRA § 309(c)(7) simply makes that section consistent with section 2(a)'s removal of the cap from pre-April 1 cases (because a cap that covers suspension cases was set forth both there and in INA § 240A(e)). The repeal of IIRIRA § 309(c)(5) makes it clear that the stop-time rule applies only to "cancellation of removal" relief (initiated on or after April 1, 1997), and does not apply to suspension cases already in the pipeline on IIRIRA's effective date.

Section 2(c). This subsection adds a new special rule for certain Central Americans covered by the settlement agreement in the ABC case or who have long-pending asylum claims. Such individuals who were not in proceedings as of April 1, 1997, will still be subject to most of the procedural changes adopted by IIRIRA. For example, removal proceedings would be commenced by filing a notice to appear in accordance with INA § 239. If these individuals wish to seek suspension-type relief, however, they will file for cancellation under the new 240A(b)(3) added by paragraph (c)(6) of these amendments. Although this is "cancellation of removal," it is governed by the same substantive standards (seven years, extreme hardship) applicable to the former suspension relief under former INA § 244. (Individuals who were placed in proceedings before April 1, 1997, do not need a special rule; their cases will already be governed by the earlier suspension rules in all respects under the amendments in sections 2(a) and (b).)

Section 2(d). This subsection sets forth the effective date of the preceding subsections, applying them as of September 30, 1996, as if included in the original IIRIRA.

Section 3. Executive Office of Immigration Review regulations (8 C.F.R. §§ 3.2(c)(2) and 3.23(b)(1)) and INA § 240(c)(6), added by IIRIRA, require that motions to reopen be filed within 90 days after a removal order becomes final, with highly limited exceptions. Some of the intended beneficiaries of section 2 will have passed this time limit by the time these amendments are enacted. This section specifically authorizes a 180-day period during which such persons may file one motion to reopen for these purposes, notwithstanding the normal statutory and regulatory limits on the timing or number of motions to reopen.